

Top Fortune Agreement

AGREEMENT between the Republic of Seychelles and the Taiwan Deep Sea Tuna Boatowners and Exporters Association on fishing activities in Seychelles Waters

THE REPUBLIC OF SEYCHELLES (hereinafter referred to as "Seychelles") of the one part
and The Taiwan Deep Sea Tuna Boatowners and Exporters Association, (hereinafter referred to as "the Association") of the other part

RECALLING that Seychelles exercises sovereignty or jurisdiction over the resources within its Exclusive Economic Zone which extends up to 200 nautical miles from its coasts,

DESIROUS of establishing the terms and conditions governing fishing activities of vessels belonging to or operated by members of the Association in the waters over which Seychelles has jurisdiction or sovereignty -

HAVE AGREED AS FOLLOWS:

ARTICLE 1

1. The purpose of this Agreement is to establish the terms and conditions under which vessels owned and operated by the members of the Association or vessels operated by the members of the Association all of which are hereinafter referred to collectively as "Company vessels" or singly as "Company vessel" may carry out longline tuna fishing in the waters over which Seychelles has jurisdiction or sovereignty (hereinafter referred to as "Seychelles Waters")

ARTICLE 2

- 2.1 The fishing activities under this Agreement shall be subject to the terms and conditions set out in this Agreement, more particularly in Annex I, and to the Laws of Seychelles.
- 2.2 The Association undertakes to take all necessary steps to ensure that the Company vessels comply with this Agreement and the laws relating to fishery in Seychelles.



ARTICLE 3

- 3.1 Seychelles shall permit a Company vessel covered by this Agreement to fish for tuna and associated species caught by the tuna longliners in Seychelles Waters during and in accordance with this Agreement.
- 3.2 The number, class and other particulars of the Company vessels covered by this Agreement are specified in Annex 2.

ARTICLE 4

- 4.1 Fishing activities by a Company vessel in Seychelles Waters may be carried out only pursuant to a licence granted by Seychelles.
- 4.2 The grant of a licence to a Company vessel shall be subject to the payment of the licence fee by the owner of the vessel.
- 4.3 The formalities for making applications for licences, the terms of the licences, the manner and method of computing the licence fees and the method of payment of the licence fees are set out in Annex 3.

ARTICLE 5

- 5.1 The Parties undertake to co-ordinate action to ensure the proper management and conservation of living resources, particularly the highly migratory species, in the Indian Ocean, especially in and around Seychelles Waters.
- 5.2 Seychelles may at any time take such measures as it deems necessary in the circumstances or in compliance with its international obligation in order to conserve and protect fishing stocks in and around Seychelles Waters.
- 5.3 Subject to paragraph 5.4, before implementing any measures referred to in paragraph 5.2, which would affect the fishing activities of the Company vessels, Seychelles shall notify the Company and the Parties shall determine by agreement the most convenient ways to implement the measures.



- 5.4 In the absence of an Agreement under paragraph 5.3 or where Seychelles is of the opinion that the measures referred to in paragraph 5.2 have to be implemented immediately, based on scientific evidence, Seychelles may after notifying the Association, take immediate steps to enforce any measures referred to in paragraph 5.2 and the Association shall ensure that the Company vessels comply with the measures.

ARTICLE 6

- X6.1 In the event of a dispute concerning the interpretation or application of this Agreement the Parties shall consult each other with a view to settle the dispute by agreement.
- 6.2 If the Parties cannot settle the dispute by Agreement, any party may refer the matter in dispute for settlement by arbitration in accordance with Annex 4.

ARTICLE 7

7. The Annexes to this Agreement form an integral part of this Agreement and, unless otherwise specified, a reference to this Agreement shall also constitute a reference to the Annexes.

ARTICLE 8

- 8.1 This Agreement shall come into force on the September 1, 2003 (hereinafter referred to as the commencement date) and shall, unless determined in accordance with Article 9, continue into force for a period of three (3) years from the commencement date.
- 8.2 The Parties may, at the end of the three year period referred to in paragraph 8.1, by agreement, and after making such amendments or modifications to this Agreement, as they may agree between them, extend this Agreement for such further periods as they may agree.
- 8.3 A party who is desirous of obtaining an extension to this Agreement as provided under paragraph 8.2 shall, not later than 3 months before the end of the three year period referred to in paragraph 8.1, notify the other party in writing of its intention to this effect and the other party shall within one month of receipt of the written notice advise the party in writing whether it is agreeable to enter into negotiation with a view to extend this Agreement.



ARTICLE 9

9. Either party may determine this Agreement by giving to the other party ninety days previous notice in writing of intention to do so. The determination of this Agreement shall become effective ninety days after the date of receipt by the other party of the notice of intention to determine the Agreement.

ARTICLE 10

10. Notwithstanding the expiration of this Agreement at the end of its term referred to in Article 8 or its determination under Article 9 or the taking of any measure under Article 5 by Seychelles, a Company vessel and the master or owner of the Company vessel shall continue to be jointly and severally liable for any breach of any provision of this Agreement or any laws of Seychelles which occurred before the expiration or determination of the Agreement or the taking of any measure under Article 5 or for any licence fee or any part of a licence fee due but not paid at the time of the expiration or determination of this Agreement or the taking of any measure under Article 5.

ARTICLE 11

11. This Agreement shall be subject to the laws of Seychelles.

ARTICLE 12

A notice required to be served under this Agreement shall be deemed to have been served if sent by telex, telefax, cable or registered mail to

- (a) in the case of Seychelles

Managing Director
Seychelles Fishing Authority
P O Box 449
Mahé
SEYCHELLES
Telex No. 2284 SFA SZ
Telefax No. 224508



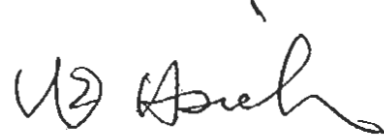
(b) in the case of the Association

Chairman, Indian Ocean Operation Committee
Taiwan Deep Sea Tuna Boatowners and Exporters
Association
RM 409, 4th Fl., No.3 Yu Kang
East 2 Rd. The Fishery Bldg.
Chien Jehn District
KAOHSIUNG, TAIWAN, R.O.C.
Tel: (07) 841-9606-8
Fax: (07) 831-3304

IN WITNESS WHEREOF the authorized representatives of the Parties have signed
this Agreement made in duplicate on this 15th day of August, 2003, Kaohsiung,
Taiwan.



FOR AND ON BEHALF
OF SEYCHELLES



FOR AND ON BEHALF
OF THE ASSOCIATION



ANNEX 1

CONDITIONS ON WHICH FISHING ACTIVITIES MAY BE CARRIED OUT

1. FISHING ZONE

The Company vessels shall not fish in the zones where fishing by foreign vessels is prohibited under the Fisheries Regulations 1987 or any other laws of Seychelles and within three miles around any Fish Aggregating Devices placed by the authorities of Seychelles. The Seychelles Fishing Authority shall notify the Association of any relevant laws of Seychelles referred to in this paragraph and of the location of any Fish Aggregating Device placed by the authorities of Seychelles.

2. LANDING, TRANSHIPPING AND BY-CATCH

- (i) Fish caught, by the Company vessels in Seychelles Waters shall be landed or transhipped in Port Victoria, except as otherwise authorised by the Seychelles Fishing Authority.
- (ii) The owners of the Company vessels shall, at the request of Seychelles, sell on conditions agreed by both parties such amount of their by-catch as the Seychelles side may request.

3. BUNKERING AND VICTUALLING

The Company vessels shall endeavour to procure all their supplies, including fuel and other services required for their fishing activities in Seychelles Waters, in Seychelles.

4. COMMUNICATION

- 4.1 The Company vessels shall, wherever they are in Seychelles Waters, report on Tuesday and Friday to the Seychelles Fishing Authority by telex, fax or email their position and particulars of their efforts and catches as set out in Appendix 1.
- 4.2 The Company vessels shall notify the Seychelles Fishing Authority of their intention to enter or exit the Seychelles EEZ in the format prescribed in items 1 and 2 respectively, of Appendix 1.
- 4.3 Entry/Exit reports shall be communicated within 12 hours before the event. Subsequent to the initial notification of entry, if the company vessels intend to exit and, thereafter, make multiple entry and exit during which fishing operations are contained within a 30 nautical miles zone outside the Seychelles EEZ, the company vessels shall be exempted from this requirement.

5. CATCH REPORT



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5.1 The Company vessels licensed to fish in Seychelles waters shall fill a catch report, in the format set out in Appendix 2, for each trip it undertakes in Seychelles waters. In the absence of catches, the catch reports shall still be filled in with the notation 'nil' concerning catches. For the periods in which the Company vessel was not present in Seychelles waters, it should provide the above mentioned catch report with the notation 'Outside Seychelles EEZ'.

5.2 The Association shall ensure that the catch report of the Company vessels, in the format as set out in Appendix 2, shall be forwarded to the Authority on arrival at Port Victoria or after the vessels finish their operation in Seychelles waters.

6. VESSEL MONITORING SYSTEM

6.1 The Company vessels fishing under this Agreement shall be monitored, inter alia by vessel monitoring systems without discrimination, under the conditions set in Appendix 4. The VMS charges shall be borne by the Association.

6.2 An administration fee of US\$ 500 shall be paid to the Seychelles Fishing Authority for the management of the VMS under the agreement for license of six months and of one year.



ANNEX 2.

DESCRIPTION OF COMPANY VESSELS

Typical particulars

- | | |
|---|---|
| 1. Average gross tonnage | 300 |
| 2. Overall length | 52.4 metre (171.91 feet) |
| 3. Hull | Steel (painted in white) |
| 4. Engines | Diesel Engine I
Brake Horse Power 1600 |
| 5. Communication Equipment | Radio Telegraph |
| 6. Navigational Equipment | Loran, Direction Finder, Depth Sounder,
Radar, Auto Pilot, Gyrocompass |
| 7. Freezing Machinery | Semi Air Blast System
Daily capacity – 8 tons |
| 8. Fishing Gear
(To be used per set) | Longline 500 Baskets
One basket consists of : <ul style="list-style-type: none">- Longline 300 meter x 1- Branch line 20-30 meter x 5- Hook 5- Float line 25 meter x 1- Buoy |
| 9. Fish storage and
Holding facilities | Freezing chamber 4 113 M3 (-60x C)
Lobby 2 49 M3 (-50 x C)
Fish Hold 5 496 M3 (-55 x C) |
| 10. Number of Crew | Total 21 (Officers 6, Seamen 15) |



ANNEX 3

LICENCE

1. APPLICATION

- (1) An application for a licence shall be made by the owner or operator of a Company vessel in the prescribed form as set out in Appendix 3 to the Seychelles Licensing Authority.
- (2) The application shall be presented by the Agents in Seychelles appointed by the Association respectively through the Seychelles Fishing Authority.
- (3) An application shall be lodged to the Seychelles Fishing Authority at least 5 working days before the date when the owner of the Company vessel intends to start fishing in the Seychelles Waters.

2. LICENCE

- (1) The licence will be issued to the owner or operator of the Company vessel for the vessel specified in the licence.
- (2) Subject to subparagraph (3) of this paragraph, a licence is not transferable.
- (3) Seychelles may on request, consider the substitution of a Company vessel specified in a licence (referred to herein as the "old vessel") by another Company vessel (referred to herein as the "new vessel") if the old vessel is lost.
- (4) Where Seychelles agrees to the substitution referred to in subparagraph (3) of this paragraph the original licence shall be returned to the Seychelles Licensing Authority and the Seychelles Licensing Authority shall issue a new licence. The new licence shall be subject to the same terms and conditions as the original licence and the original licence shall cease to have effect as of the date of the issue of the new licence.
- (5) The licence number shall at all times be displayed in accordance with Regulation 6(h) (ii) of the Fisheries Regulations 1987.
- (6) A licence shall not exceed beyond the term of this Agreement.
- (7) The licence fee is non-refundable.



3. LICENCE FEE

The licence fee shall be as follows :

- (i) US\$5,000 per month per vessel for vessels of Gross Registered Tonne of 499 tonnes or less and an additional amount of US\$3,000 for each additional thirty (30) days license period within the license period starting from September 1st of each year to the 31st August of the following year.

Or

US\$10,500 Per vessel for vessels of Gross Registered Tonne of 499 tonnes or less for a consecutive license period of six months.

Or

US\$12,500 per annum per vessel for vessels of Gross Registered Tonne of 499 tonnes or less.

- (ii) US\$6,000 per month per vessel for vessels of Gross Registered Tonne of 500 tonnes or more and an additional amount of US\$3,500 for each additional thirty (30) days license period within the license period starting from September 1st of each year to the 31st August of the following year.

Or

US\$12,500 Per vessel for vessels of Gross Registered Tonne of 500 tonnes or more for a consecutive license period of six months.

Or

US\$14,500 per annum per vessel for vessels of Gross Registered Tonne of 500 tonnes or more.

4. PAYMENT

Any licence fees shall be payable in US\$ and be remitted to the account of the Seychelles Licensing Authority at the Central Bank of Seychelles, Independence Avenue, Mahé, Seychelles.



ANNEX 4

ARBITRATION

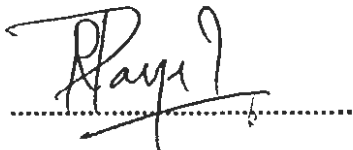
1. Within one month from the date on which either Party has formally requested that a dispute be submitted to arbitration in accordance with Article 6 of this Agreement, each Party shall appoint one member of the arbitral tribunal and these two members shall, within two months from the same date, agree upon a national of a third state, not being a national of either Seychelles or Taiwan who shall be appointed chairperson.
2. The Party requesting arbitration shall submit a statement of its claim and the grounds on which such claim is based to the other party at the time of making a request for arbitration.
3. If the period specified in paragraph 1 have not been observed, or if the parties fail to agree upon a national of a third state as provided in paragraph 1, either Party may, in the absence of any other relevant arrangement, invite the Chief Justice of Seychelles to make the necessary appointment.
4. The arbitral tribunal shall hold its meetings in Seychelles.
5. The arbitral tribunal shall, on the basis of the present Agreement and of other rules of international law, reach its decision by a majority of votes. Such decisions shall be binding. Although the cost of the arbitral tribunal shall normally be borne in equal parts by both Parties, the arbitral tribunal may rule otherwise concerning costs. In all other respects, the arbitral tribunal shall determine its own procedures.



Memorandum of Understanding

WHEREAS the Republic of Seychelles and the Taiwan Deep Sea Tuna Boat Owners and Exporters Association have entered into a fishing agreement dated 15th day of August 2003, the Republic of Seychelles undertakes to suspend Articles 2 (i), 2 (ii) and 3 of Annex I of the said Agreement.

Dated 15th day of August, 2003



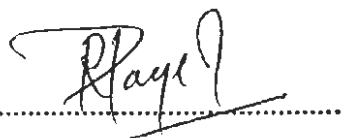
For and on behalf of the
Republic of Seychelles



Memorandum of Understanding

WHEREAS the Republic of Seychelles and the Taiwan Deep Sea Tuna Boat Owners and Exporters Association have entered into a fishing agreement dated 15th day of August 2003, the Republic of Seychelles undertakes to suspend Articles 4.1 of Annex I of the said Agreement. The Association, wherever the Company vessels are in Seychelles Waters, agrees to present the data of Licensed Vessels as set out in Appendix 1 of the said Agreement, which data will be submitted to the Seychelles Fishing Authority at every Wednesday of following week.

Dated 15th day of August, 2003



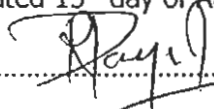
For and on behalf of the
Republic of Seychelles



Memorandum of Understanding

WHEREAS the Republic of Seychelles and the Taiwan Deep Sea Tuna Boat Owners and Exporters Association have entered into a fishing agreement dated 15th day of August 2003, the Republic of Seychelles undertakes to suspend Appendix 4 of the said Agreement for a period of six months. The Parties agree to have technical consultations during this period with a view of finding solutions to the present problems being encountered. The Seychelles Government may agree to review the terms and conditions of Appendix 4 following these consultations. The Association shall however do its utmost towards the implementation of this Appendix. SFA agrees that if during this period it cannot poll positions of the Company's Vessels at application of licence, the SFA will agree to process the licence providing that OFDC certifies that the vessel's VMS transmitter is operational. In this case, the Company's vessels shall submit as far as possible three daily position reports to SFA.

Dated 15th day of August, 2003


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For and on behalf of the
Republic of Seychelles



Appendix I

COMMUNICATION FORMAT REPORTS

1. ENTRY REPORT FORMAT (WITHIN 12 HOURS BEFORE THE EVENT)

(CONTENT)	(TRANSMISSION)
(1) ADDRESSEE	SFA
(2) ACTION CODE	IN
(3) VESSEL NAME	
(4) CALL SIGN	
(5) POSITION OF ENTRY	
(6) DATE AND HOUR (GMT) OF ENTRY	

2. DEPARTURE REPORT FORMAT (WITHIN 12 HOURS BEFORE THE EVENT)

(CONTENT)	(TRANSMISSION)
(1) ADDRESSEE	SFA
(2) ACTION CODE	OUT
(3) VESSEL NAME	
(4) CALL SIGN	
(5) POSITION OF DEPARTURE	
(6) DATE AND HOUR (GMT) OF DEPARTURE	

3. WEEKLY CATCH REPORT FORMAT (EVERY TUESDAY AND FRIDAY OR DATE OF DEPARTURE WITH DEP. REPORT)

(CONTENT)	(TRANSMISSION)
(1) ADDRESSEE	SFA
(2) ACTION CODE	WCRT OR WCRF
(3) VESSEL NAME	
(4) CALL SIGN	
(5) CATCH BY SPECIES (PRODUCED WEIGHT) AFTER LAST REPORTING (TENTH OF TONS)	
ALBACORE	AL
BIGEYE	BE
YELLOWFIN	YF
OTHERS	OT
(6) EFFORT : NUMBER OF SET	



**PROVISIONS ESTABLISHING THE METHOD TO BE USED FOR THE
TRANSMISSION OF DATA RELATING TO SATELLITE MONITORING OF THE
POSITION OF THE COMPANY'S VESSELS**

This Appendix seeks to give the Seychelles Fishing Authority the necessary management tool to effectively monitor the movements of foreign fishing vessels that are licensed to operate within the Seychelles EEZ. For the effective implementation of this Appendix, it is recommended that there should not be any form of discrimination between the reporting requirements of any foreign vessels that are licensed by the Seychelles Government to harvest resources inside the Seychelles Exclusive Economic Zone (EEZ).

- 1 For the purpose of satellite monitoring, the Seychelles authorities shall, if necessary, communicate to the Service Provider utilised by the Company's vessels licensed to fish in the waters of the Seychelles, the co-ordinates (latitude and longitudes) of the Seychelles Exclusive Economic Zone.

The Seychelles authorities will transmit this information in electronic format, expressed in degrees decimal in the Wgs-84 system *datum*.

- 2 The Seychelles authorities and the relevant Service Provider(s) will exchange information on their respective electronic addresses, X.25 format and/or electronic mail, and the specifications to be used by the respective Service Provider(s) in accordance with the conditions established in points 4 and 6. This information will include as far as possible, the names, the telephone, telex and fax numbers and the electronic addresses (Internet) that can be used for the general communications between the Seychelles Fisheries Monitoring Centre (FMC) and the Service Provider(s).
- 3 The position of the vessels will be determined with a margin of error of less than 500 metres and with a confidence interval of 99%.
- 4 When an Company's fishing vessel enters into the Seychelles waters; subsequent position reports; shall be communicated by the vessel's Service Provider to the Fisheries Monitoring Centre of Seychelles automatically, in near real time, at least every hour (frequency). These messages are identified as Position Reports.
- 5 The messages referred to in item 4 shall be transmitted electronically in X.25 format or electronic mail, without any additional protocol. All messages will be communicated automatically, in near real time in accordance with the Argos (DS or TX format) or Thrane & Thrane compatible Land Earth Station format.
- 6 In the event of a technical problem or malfunction of the satellite monitoring device installed on board the fishing vessel, the master of that vessel shall communicate in good time by fax, telex or e-mail to the Seychelles FMC⁰, the information specified in item 4. In these circumstances, it will be necessary to send a Global Position Report at 6.00 am, 12.00 pm and 6.00 pm (Seychelles local time)



as long as the ship is in Seychelles waters. This Global Position Report will include the position reports as registered by the master of the vessel on an hourly basis. In case of necessity or doubts, the Seychelles Fishing Authority (SFA) could ask for a determine vessel a transmission of the position report every hour. Defective equipment shall be repaired or replaced as soon as the vessel concludes its fishing trip or within 45 days at the maximum. Past this period, the vessel shall not engage in fishing activities in Seychelles waters.

- 7 Vessels with defective satellite monitoring devices will not be allowed to renew their licences until the Seychelles FMC is satisfied that the device is functioning in accordance to point 4 above.
- 8 If the Seychelles Monitoring Centre establishes that a vessel's Service Provider is not transmitting data in conformity with item 4 above, the other parties¹ shall be immediately notified.
- 9 Monitoring data transmitted in accordance with the provisions of this Appendix shall be intended exclusively for, control, management, monitoring and enforcement by the Seychelles authorities of the Company's vessels licensed to fish in the Seychelles EEZ. These data cannot be communicated to other parties under any circumstances, except with the written consent of the vessel owner, on a case by case basis, or by an order of the Court in Seychelles.
- 10 Company's vessels agree to take all the necessary steps to fulfil the requirements relating to the messages provided for in item 4 upon being granted a licence to fish in the Seychelles or as soon as the licensed vessel enters the Seychelles EEZ.
- 11 It is agreed that, at the request of either party, there will be an exchange of information on the equipment used for satellite tracking, in order to ensure that the said equipment is fully compatible with the requirements of the other party for the purposes of this Appendix.
- 12 Company's licensed fishing vessels passing through the Seychelles EEZ on innocent and/or transit passage will be exempted from these VMS management requirements. However, the vessels shall provide entry and exit reports to the SFA by Fax, Telex or E-mail as per [Appendix 5].
- 13 Any problems arising out of the implementation of this Appendix will be discussed and resolved through the Provisions of Article 6 of the Agreement.
- 14 Any Company's vessel covered by the TTA/Seychelles fisheries agreement, found fishing inside the Seychelles EEZ without a functional VMS transmitter, and not implementing item 6 of this Appendix, will have its fishing license cancelled.

⁰ Contact details of the FMC

